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SIPDIS

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SUBJECT: GOM TAKES ISSUE WITH MALAWI'S TIP RANKING

REF: A. LILONGWE 710

1B. LILONGWE 714

SUMMARY

11. (SBU) Minister of Foreign Affairs George Chaponda told the Charge on July 28 that the GOM is "very concerned" about Malawi's ranking as a Tier Two - Watch List country in the Department's 2004 Trafficking in Persons (TIP) Report. Chaponda said the ranking "did not reflect the situation on the ground" and was "contestable and debatable." Further explaining the government's position, Chaponda said the report's findings were "not substantiated by qualified evidence," and he insinuated that the misinformation may have been the result of a report by an NGO who "had not done thorough research on the matter." In addition to detailing measures the GOM has already taken and will take against TIP, Chaponda commented that an inter-ministerial meeting on the issue concluded that the GOM will release a press statement contesting the Department's ranking, which it did later in the day. Although challenging the accuracy of the report, Chaponda repeatedly declared the GOM's commitment to fighting TIP and support for USG TIP initiatives at UNGA. Text of press statement begins in paragraph 11. END SUMMARY.

CHAPONDA READY TO TALK ON TIP

12. (SBU) At a July 28 meeting with the Charge, Minister of Foreign Affairs George Chaponda used the USG's initiative on TIP at UNGA as an entree to officially respond on behalf of the GOM to Malawi's Tier Two - Watch List ranking in the Department's 2004 Trafficking in Persons (TIP) report. Well briefed and reading from a prepared statement, Chaponda said the GOM "was very concerned" about Malawi's ranking because "it did not reflect the situation on the ground." Chaponda described the report as "contestable and debatable" and asserted that its findings were not "substantiated by qualified evidence." Chaponda indicated that the report had been discussed at an inter-ministerial meeting, where representatives from various branches of government found the ranking "shocking." (NOTE: The Charge later learned that the President, having read the 2004 TIP report, ordered the inter-ministerial meeting to convene. END NOTE.)

THE GOM'S SPECIFIC COMPLAINTS

13. (SBU) Pointing out specific areas of concern, Chaponda questioned the Department's interpretation of "TIP" and of "prostitution," suggesting that the two were separate issues and that the report's characterization of them were "an exaggeration of reality." Chaponda argued that the GOM had been "uncompromising" in its dealing with the "few reported cases" of TIP. Without citing specific examples, Chaponda said that the few cases that had been reported were investigated and taken to court, resulting in a number of convictions. Chaponda also said there had been a number of "unconfirmed and unsubstantiated claims" that lacked enough evidence for the police to follow up on. As evidence of the police's work, Chaponda said that several cases had even been referred to Interpol. Rounding out his argument about the GOM's effective treatment of TIP, Chaponda asserted that the Police and other government experts had not been adequately consulted during the compilation of the report. (NOTE: Con/poloff later confirmed to Charge that the police, indeed, had been consulted. END NOTE.)

MALAWI'S LAWS AS RELATED TO TIP

14. (SBU) Turning to Malawi's legal framework as related to TIP, Chaponda said the Penal Code has several provisions prohibiting "offenses against morality, such as prostitution and the movement of people." To make the legislation more forceful, he said Parliament will pass in the coming sessions legislation that specifically criminalizes TIP. Chaponda said the bill had been presented last year and that parliamentarians wanted "more time to study the issue" before acting on the legislation. He assured the Charge, that "as a parliamentarian," he "will make sure the legislation goes through."

15. (SBU) Reinforcing his assertion that the GOM was serious

about TIP, Chaponda specifically cited Malawi's accession to the "Convention for the Suppression of the TIP and of the Exploitation of Prostitution of Others" (New York, 1950) and the "Final Protocol to the Convention for the Suppression of the TIP and of the Exploitation of the Prostitution of Others" (New York, 1950). Chaponda also said the GOM has finished consultations and intends to sign and ratify the "Protocol to Prevent, Suppress, and Punish TIP Especially Women and Child, Supplementing the United Nations Convention Against Transnational Organized Crimes" (2000), AKA "The Palermo Protocol."

MISINFORMATION AND A REGIONAL PERSPECTIVE

16. (SBU) Offering a possible source of misinformation, Chaponda said the report recently released by International Organization on Migration (IOM) was not based on "a thorough research of TIP" in Malawi. He questioned the veracity of information that a non-resident organization could produce and also noted how dated the report's example cases were.

17. (SBU) Turning to a regional perspective, Chaponda said he, as a lawyer, had examined the laws in other SADC nations and found Malawi's TIP laws to be comparable to those of other countries. He specifically noted Botswana's TIP laws were very similar to those of Malawi.

FURTHER INVESTIGATION NECESSARY AND THE GOM'S RESPONSE

18. (SBU) Before moving to Malawi's position at UNGA, Chaponda "begged" for wider consultation to be done on TIP in Malawi and indicated that the GOM had decided to issue a press statement to refute the Department's claims in the 2004 TIP Report.

SUPPORT AT UNGA

19. (SBU) Chaponda concluded by saying that Malawi, as a nation "committed to fighting TIP," will support the USG's TIP initiatives at UNGA, even though the GOM challenges the findings of the Department's report (reftel B).

COMMENT

10. (SBU) Chaponda rightly notes that much of what is known about TIP in Malawi is based on rumors and hearsay. In addition, the GOM's press statement accurately details the government's previous efforts to prevent TIP, prosecute perpetrators, and protect victims. Considering the lack of specific evidence on the issue and the GOM's budgetary focus on pro-poor expenditures, it is unlikely that the GOM will have any additional resources to spend on TIP. Without concrete evidence and resources forthcoming, it will become more difficult to continuing justifying the Department's stance on TIP in Malawi. That said, we are encouraged by the GOM's renewed interest to improve TIP legislation and to ratify the Palermo Protocol. END COMMENT.

11. (U) The press statement issued by the GOM is as follows:

PRESS STATEMENT ON HUMAN TRAFFICKING AND PROSTITUTION

The Government of the Republic of Malawi has noted with concern the report issued by the United States Department of State giving the impression that the human trafficking situation in Malawi, particularly of women and children, and organized prostitution, has escalated to the extent of warranting Malawi to be listed as a Tier 2 Watch List country.

The Government of Malawi finds the report debatable, particularly considering that it is not substantiated by a list of identifiable interviewees, credible sources or confirmed incidences and reliable statistics. The facts on the ground show that the Government of the Republic of Malawi has been uncompromising in dealing with the only few reported and known cases of trafficking in human beings and organized prostitution, thereby drawing the wrath of human rights activists and women and children rights groups.

Indeed, the few reported and confirmed cases have been vigorously pursued in the courts and in a number of instances perpetrators have been convicted. It is, therefore, disturbing when other agencies claim that Malawi has no laws making human trafficking and organized prostitution criminal offenses. If a number of perpetrators have been arrested and convicted for trafficking women and children, one wonders what laws they may have violated for argument sake.

There have been many claims, most of which unconfirmed or unsubstantiated, making it almost impossible for the Malawi Police to arrest or prosecute anybody. No doubt, quite a number of agencies both within and outside the Government could not provide credible information to the Police or the Ministry responsible for women and children affairs, to support the claims in the report. The Malawi Police Force on its own initiative has contacted a number of international

enforcement agencies, such as, Interpol and SARPCO, who also could not confirm the findings in the report. There may have been some isolated incidences but certainly not to the extent of the picture painted by the report.

The people who compiled this report seem not to have consulted any experts on this subject or the people who could have availed them with accurate information. Our observation is that they may have misdirected themselves on the law governing trafficking and prostitution. We also question their interpretation of the technical terms "trafficking in human beings" and "prostitution." If the report is talking about prostitution and trafficking in international law and under common law jurisdictions, then the findings of the report are an exaggeration of the realities on the ground.

The Government of the Republic of Malawi wishes to reiterate its commitment to fight and stamp out trafficking in humans, particularly in women and children and will spare no effort in this endeavor. Indeed, Malawi has already signed and ratified a number of critical conventions and protocols aimed at addressing this human trafficking and prostitution including: the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted in New York in March 1950 and the Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others also adopted in New York in the same year. It has also concluded consultations on the "Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Organized Transnational Organized Crimes, 2000" with the aim of signing and ratifying.

It is curious to note that despite having legal provisions in our laws i.e., the Constitution and the Penal Code which has an exclusive chapter entitled "Offenses Against Morality" dealing with "prostitution, living on earnings of prostitution, taking people away either within or outside Malawi for prostitution, taking people away to be in brothels whether willingly or against their consent" among other offenses provided for, the report in question paints a very bad picture of Malawi.

Further, the Government, on its own initiative, after carrying out consultations on the possible legal complications and technical problems of prosecuting certain permutations of offenses related to human trafficking especially among women and children and taking into contemplation obligations assumed by being parties to treaties, and in solidarity with global efforts to curb the problem in this area, prepared and submitted to Parliament, the Penal Code (Amendment) Bill No: 12. The Bill has never been withdrawn but that Members of Parliament asked for more time to study and appreciate certain concepts about trafficking and prostitution, most of which, novel and inconsistent with traditional notions of prostitution and cultural values as understood. It is, therefore, a misrepresentation to suggest that the Bill was withdrawn or that our Penal Code is so inadequate to an extent that traffickers in human beings would easily slip through the long arm of the law, warranting the conclusion in the report that Malawi has no laws to curb offenses of trafficking and prostitution. Our contention is that the low levels of arrests and prosecutions only vindicate the realities of the problem as it exists on the ground and as confirmed by our own experts.

The Government of Malawi is willing and ready to work with any agency which has credible information that could help, if any, in cracking down on any known or identifiable gangs or groups or persons in trafficking or prostitution. Further it also welcomes experts, if any, who have information on the purported inadequacies of its laws other than the way our Penal Code (Amendment) Bill No: 12 proposes to seal perceived technicalities and nuances.

The Government of the Republic of Malawi vehemently and categorically rejects the findings in the report painting a picture that human trafficking and organized prostitution have escalated and that it has no legal mechanism to address the few and isolated confirmed cases.

MINISTRY OF FOREIGN AFFAIRS
LILONGWE 3

29th JULY, 2004

End text.
RASPOLIC